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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,241	11/21/2005	Alfred von Schuckmann	RIE-24157	6871
24131	7590	12/09/2008	EXAMINER	
LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480				WON, BRIAN D
ART UNIT		PAPER NUMBER		
4185				
MAIL DATE		DELIVERY MODE		
12/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/526,241	SCHUCKMANN, ALFRED VON	
	Examiner	Art Unit	
	BRIAN WON	4185	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 November 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 55-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 55-58 and 61 is/are rejected.
- 7) Claim(s) 59 and 60 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 November 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>23 January 2006</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claim 55** is rejected under 35 U.S.C. 102(b) as being anticipated by **Bougamont et al. (US Patent 5,239,992)**.

Regarding claim 55, Bougamont et al. discloses an inhaler comprising:

- a mouthpiece (4) and a suction air channel (9a) leading to said mouthpiece (Figure 1);
- a storage chamber (8) for storing therein the powdery substance (Figure 1);
- a dosing chamber (3) linearly movable within the inhaler, for apportioning a specific amount of the powdery substance from said storage chamber to a transfer point (13), from where a suction air stream, entering through a lateral opening and towards said dosing chamber, transports the powdery substance within said air channel to said mouthpiece; and
- wherein said dosing chamber is formed with two openings and a respective air inlet (12, 13) is disposed upstream of each of said

openings, for emptying said dosing chamber with respective components of the suction air stream through either opening.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 56-58** rejected under 35 U.S.C. 103(a) as being unpatentable over **Bougamont et al. (US Patent 5,239,992)** in view of **Altermatt et al. (US Patent 5,263,475)**.

Regarding claim 56, Bougamont et al. discloses a dosing chamber being a conical transverse bore formed in a linearly movable transporting mechanism (2b).

Bougamont et al. fails to disclose transporting mechanism being a spindle.

However, Altermatt et al. teaches having a bore (50) in a linearly movable spindle (5) (Figures 1 and 2).

6. It would have been obvious to one of ordinary skill in the art to modify the teaching of Bougamont et al. with having a bore in a linearly movable spindle taught by Altermatt et al. since by doing so would produce an inhaler for powdery substance with a spindle capable of transporting powdery substance to user.

Regarding claim 57, Bougamont et al. further discloses a transverse bore (3) having a portion with a larger diameter and a portion with a smaller diameter (Figure 1), and wherein air inlet (12) associated with a lateral opening of dosing chamber having the larger diameter having a smaller diameter than air inlet (13) associated with a lateral opening of dosing chamber having the smaller diameter (Figure 1).

Regarding claim 58, Bougamont et al. discloses a mouthpiece (4) formed with an extension limiting stop for the linearly movable transporting mechanism (2b), defining a ready-to-empty position of dosing chamber, and wherein a basewall portion of dosing chamber defines the transfer point (Figure 1).

Bougamont et al. fails to disclose transporting mechanism being a spindle.

However, Altermatt et al. teaches a dosing chamber (50) in a linearly movable spindle (5) (Figures 1 and 2).

7. It would have been obvious to one of ordinary skill in the art to modify the teaching of Bougamont et al. with having a bore in a linearly movable spindle taught by Altermatt et al. since by doing so would produce an inhaler for powdery

substance with a linearly moving spindle transporting powdery substance and a mouthpiece formed to stop the spindle.

8. **Claim 61** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Bougamont et al. (US Patent 5,239,992)** in view of **Altermatt et al. (US Patent 5,263,475)** and **Andersson et al. (US Patent 6,655,380 B1)**.

Regarding claim 61, Bougamont et al. discloses a dosing chamber in a transporting mechanism (2b) and a closure cap (11).

Bougamont et al. fails to disclose transporting mechanism being a spindle guided in a rotary part.

However, Altermatt et al. teaches a dosing chamber (50) in a spindle (5) guided in a rotary part (102) (Figure 19 and column 14, lines 21-22).

9. It would have been obvious to one of ordinary skill in the art to modify the teaching of Bougamont et al. with having a dosing chamber in a linearly movable spindle guided in a rotary part taught by Altermatt et al. since by doing so would produce an inhaler for powdery substance with a spindle capable of transporting powdery substance to user and a rotary part for assisting transportation.

Bougamont et al. invention as modified by Altermatt et al. fails to disclose a closure cap formed as a screw cap and configured to interact through co-rotating means with mouthpiece and rotary part.

However, Andersson et al. discloses a closure cap (168) formed as a screw cap and configured to interact through co-rotating means with mouthpiece (2) and rotary part (52) (Figure 17 and column 11, lines 50-56 and column 12, lines 36-56).

10. It would have been obvious to one of ordinary skill in the art to modify the teaching of Bougamont et al. modified by Aletermatt et al. since by doing so would produce an inhaler for powdery substance with a cover cap capable of being unscrewed as it loosens the powdery substances.

Allowable Subject Matter

11. Claims 59-60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited for disclosing related limitations of the applicant's claimed and disclosed invention: **Bougamont et al. (US Patent 5,239,992)**, **Altermatt et al. (US Patent 5,263,475)** and **Andersson et al. (US Patent 6,655,380 B1)**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN WON whose telephone number is (571)270-7129. The examiner can normally be reached on Monday thru Friday, 9:00 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell McKinnon can be reached on (571)272-4797. The

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fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN WON/
Examiner, Art Unit 4185

/Terrell L Mckinnon/
Supervisory Patent Examiner, Art Unit 4185